

**In the High Court of Punjab and Haryana, at Chandigarh.**

**Civil Writ Petition No. 4710 of 1989**

**Date of Decision: 17.12.2008**

Nur Mohammad Farooqui

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.**

Present: Mr. A.P. Bhandari, Advocate  
for the petitioner.

Mr. Satish Bhanot, Senior Deputy Advocate  
General, Punjab, for the respondent.

**Kanwaljit Singh Ahluwalia, J. (Oral)**

The present petitioner has raised two fold submissions in the present writ petition. It was stated by the petitioner that he joined as Octroi Superintendent in the Municipal committee, Malerkotla, in August 1959. The petitioner submitted that he has working in Class-I Municipalities. At the time when Punjab Municipal Service (Recruitment and Conditions of Service) Rules, 1975 (hereinafter referred to as "the Rules") were enforced, there were 12 posts of Executive Officers of Class-I. Later on 14 more posts were created. Thus, there were 26 posts of Executive Officers of Class-I.

The petitioner has raised grievance against the advertisement dated 30.9.1987 issued by the State of Punjab for filling up nine posts of

Executive Officers of Class-I for the State of Punjab through direct recruitment. Petitioner stated that since he acquired experience, the action of respondent-Punjab State is bad in issuing interview letters to the persons for appointment as Executive Officers in Municipal Committees Grade-I by way of direct recruitment.

An affidavit was submitted by the Under Secretary to the Government of Punjab in which it was stated that as per the 1975 Rules, nine posts of Executive Officers of Class-I in the State are to be filled up by way of direct recruitment in accordance with the Rules. It is stated that six persons were absorbed as Executive Officers in Class-I Municipal Committees in terms of Rule 5(1) of the above said Rules and as per Rules, 50% vacancies are to be filled up by way of direct recruitment and 50% vacancies are to be filled up by promotion on seniority-cum-merit basis.

Mr. Bhanot has very categorically stated that the petitioner has retired.

Second grievance made in the present writ petition is that petitioner had discharged his duties as Executive Officer of Class-I in Class-I Municipal Committees in his own pay scale, therefore, he is entitled to be paid salary as per the scale which were admissible to the Executive Officer Class-I. Petitioner has stated that since he had discharged his duties as Executive Officers Class-I the maxim of "Equal Pay for Equal Work" has to operate in his favour and State is bound to pay the salary to him as the Executive Officer Grade-I.

In reply filed, it has been submitted that till the direct recruits were to be appointed on the administrative ground, petitioner as

Executive Officers Class-II was asked to discharge duties as Executive Officer Grade-I. It has been stated that petitioner was neither appointed as Executive Officers Class-I by way of direct recruitment nor by way of promotion. If due to the exigencies of situation, an employee, till the new incumbent arrived, working in a lower grade is asked to discharge duties on a similar post having a higher grade as a stop gap arrangement, he cannot claim that he should be paid salary according to the higher grade.

Mr. Bhanot states that later all the petitioner was promoted as Executive Officer Class-I.

Learned counsel for the petitioner has relied upon **Smt. P. Grover v. State of Haryana 1983(2) Services Law Reporter 734**, in which it was held that where a person is promoted and is paid lower scale that cannot be sustained. This judgment is of no help to the petitioner to the present writ petition as in the present case there was no promotional order of the petitioner. He was to only discharge duties till the direct incumbents were appointed. Petitioner was Executive Officer of Municipal Committee Grade-II, simply because he was discharging the same duties in Municipal Committee Grade-I, it will not be held that he was discharging the duties of a post which carried some onerous responsibility.

Similarly, the other two judgments rendered in **Anand Parkash v. State of Punjab 2005(3) Recent Services Judgments 749** and judgment rendered by learned Single Bench of this Court in **Satish Kumar and Others v. State of Haryana (Civil Writ Petition No. 8615 of 1991 decided on 20.10.1993)** are of no help to the petitioner as in **Satish Kumar's cas (supra)**, petitioner was not considered for

promotion. In the present case, post was meant for direct recruits. Since the petitioner was not discharging duties of higher responsibility, therefore, he is not entitled to the relief sought.

Mr. Bhanot states that at the relevant time, services rendered in Municipal Committee Grade-I was provincial service and the petitioner was to be selected to become member of Municipal Committee Grade-I. He cannot claim that he should be paid the salary which is due to the Executive Officer discharging the duties of Municipal Grade-I.

It has been consistently considered and held by this Court that only a regular selection by way of advertisement or from requisition made from the Employment Exchange shall vest right in the incumbent. A person like petitioner discharging duties will not be entitled to the benefit of scale prevailing for that post.

Hence, there is no merit in the present petition, same is dismissed.

**(Kanwaljit Singh Ahluwalia)**  
**Judge**

**December 17, 2008**

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